

REMARKS

A. Introduction

Claims 11 through 44 were presented for examination.

Claims 11, 12, 13 and 41 were objected to due to informalities.

Claims 11 and 14-17 were rejected under 35 U.S.C. § 112 for reciting matter which lacked a clear antecedent basis.

Claims 11-44 were also rejected under 35 U.S.C. § 103(a).

B. Claim Cancellation

This Application was filed by the Inventor, Joe Byles, *pro se*, without the aid of a patent attorney or patent agent. The Applicant's inexperience and lack of knowledge regarding proper claim structure and grammar and claim terminology and consistency resulted in claims which were redundant, confusing and difficult to understand and caused many, if not all, of the objections and rejections by the Examiner. Consequently, in order to clarify the claimed invention and eliminate the confusion which Applicant believes has occurred with the original claims, the Applicant has cancelled claims 11-44 and redrafted new claims 45-77 in substitution. It is Applicant's position that the new claims, as drafted, have eliminated the claim objections, claim rejections under 35 U.S.C. § 112 and claim rejections under 35 U.S.C. § 103(a). The Applicant's argument with regard to the 103(a) rejections are discussed more fully below.

C. Claims 11-44 were Rejected Under 35 U.S.C. § 103(a).

The Examiner has rejected claims 11-44 under 35 U.S.C. § 103(a) as being unpatentable over Robey in view of Jones and further in view of Daniel. The Examiner has stated that the primary reference, Robey, has all of the elements of claims 11-44 with the exception of closed cell foam or plastic peripheral edge boundary material and a flow controlled device regulating

the amount of irrigation water. The Examiner contends that Jones and Daniel provide each of these elements respectively.

1. The Examiner Bears the Initial Burden of Establishing a *Prima Facie* Case of Obviousness.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. To establish *prima facie* obviousness, all of the claim limitations must be taught or suggested by the prior art. MPEP § 2.143.03. Moreover, there must be some suggestion or motivation to modify the reference or to combine the reference teachings, and that this suggestion or motivation “must . . . be found in the prior art, not in the applicant’s disclosure.” See MPEP § 2.143 (citing *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991)). The Federal Circuit has held that although a prior art reference “may be capable of being modified to run the way an apparatus is claimed, there must be a suggestion or motivation in the reference to do so.” See *Id.* In *In re Dembicsak*, 175 F.3d 994, 999 (Fed. Cir. 1999). “That is, the showing must be clear and particular.” *Id.* In this instant, the prior art references and in particular the Robey reference do not teach or suggest all of the claim limitations as suggested by the Examiner. Neither of these prior art references suggest modifications therein which would teach the claimed invention.

2. The Robey Reference Does Not Have a Panel That Distributes Water and Traps Air As Claimed in the Present Invention.

The present invention discloses a panel of porous material in which plants can grow. The panel acts as the primary water holding and distribution structure and the medium in which the roots grow. Importantly, due to the structure of the panel material, it traps air within the panel so that water and air are available to the roots, both of which are necessary for plant health and growth. In the original claims, it was unclear that the “panel” and the “primary water

distribution and air holding structure" were one and the same.

Robey discloses a system a process for constructing a turf field primarily directed at enhancing the durability of the turf making it well suited as an athletic playing field. *See Robey, Abstract, Lines 1-3; Col. 2, Lines 60-65; and Col. 3, Lines 3-6.* Robey discloses a turf subsurface having a lower porous medium of soil (such as sand) below an upper porous medium comprised of substantially non-compactable materials such as described in U.S. Patent No. 3,908,385. *See Robey, Lines 445.* The mixture described in U.S. Patent No. 3,908,385 is disclosed as peat, vermiculite and calcined aggregate. *See U.S. Patent No. 3,908,385, Col. 3, Lines 11-15.* A first layer of netting is positioned between the lower porous medium and the upper porous medium and a second layer of netting is positioned at the top of the upper medium so that the blades of grass extend through the netting. *See Robey, Col. 3, Line 67 – Col. 4, Line 7.*

The Examiner has asserted that the netting (47, 47(b)) is a primary water distribution structure and air holding structure. It is not. While water may pass through the netting, it does not act to distribute the water to the plant roots. In addition, and equally as important, the netting does not act to trap air. There is nothing in Robey to suggest that it could or would. The sole purpose of the netting in Robey is to enhance the durability of the turf grass. *See Robey, Col. 3, Lines 65-67.* Moreover, the Examiner considered the mesh openings in the netting to be recessed openings in the panel. However, since the netting is not a panel as described in this invention, Robey does not disclose recessed openings in a panel.

The Examiner also asserts that Fig. 1 discloses a substantially continuous panel. While it is difficult to understand what the Examiner is asserting, the Applicant assumes that the Examiner is referring to the rectangular grid as a panel. Fig. 1 is not a panel. Instead it is

depicting an athletic playing field and the arrangement of drain lines beneath the surface of the field. See Robey, Col. 3, Lines 1-37. It may be that the Examiner is considering the combination of the two layers of porous medium and two layers of netting as the panel. Once again, however, if this is the Examiner's position, such a combination would not disclose the elements of a panel as described in the present invention. First, the porous medium is made up of separate and distinct granules of sand in the lower layer and a combination of separate particles in the upper layer. Consequently, the medium layers cannot be described as a substantially continuous material. Second, these mediums and netting do not trap air as does the panel in the present invention. Instead, when water fills the medium layers, it forces the air out through the material leaving no air trapped in the layer for the roots. Moreover, there is simply no suggestion or motivation in Robey that the mediums or combination of mediums and netting will trap and hold air as water is introduced into the soils. It is this air-trapping characteristic in the panel of the present invention which allows the plants to thrive.

For these reasons, it is Applicant's position that the Examiner has failed to make out a *prima facie* case of obviousness.

CONCLUSION

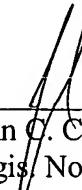
In view of the above, Applicant respectfully requests consideration of new claims 45-77. The Applicant submits that claims 45-77 are in a condition for allowance.

If the Examiner finds impediments to the allowance of claims 45-77 and in the opinion of the Examiner a telephone conference between the undersigned and the Examiner would help remove such impediments, the undersigned respectfully requests such a telephone conference.

Respectfully submitted,

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